No. 10203

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Ninth Circuit

APARTMENT OPERATORS ASSOCIATION,
a corporation, *Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONER'S OPENING BRIEF UPON PETITION TO REVIEW DECISION OF THE BOARD OF TAX APPEALS.

EDWARDS MERGES,
JOSIAH THOMAS, and
CLARENCE L. GERE,
Attorneys for Petitioner.

No. 10203

IN THE
UNITED STATES
CIRCUIT COURT OF APPEALS

For the Ninth Circuit

APARTMENT OPERATORS ASSOCIATION,
a corporation, *Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONER'S OPENING BRIEF UPON PETITION TO REVIEW DECISION OF THE BOARD OF TAX APPEALS.

EDWARDS MERGES,
JOSIAH THOMAS, and
CLARENCE L. GERE,
Attorneys for Petitioner.

SUBJECT INDEX

TABLE OF CASES

No. 10203

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Ninth Circuit

APARTMENT OPERATORS ASSOCIATION,
a corporation, *Petitioner,*

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONER'S OPENING BRIEF UPON PETITION TO REVIEW DECISION OF THE BOARD OF TAX APPEALS.

JURISDICTION

This is a proceeding to review a decision of the United States Board of Tax Appeals (46 B. T. A. No. 31) determining that the petitioner is not exempt under the Revenue Act of 1938, Sec. 101 (7), and that it is accordingly liable for income and excess profits taxes for the year 1938.

From respondents determination of proposed deficiency, an appeal was taken to the Board of Tax Appeals under Sec. 272 (a) (1) I.R.C.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Washington, with its principal office in Seattle, Washington, and filed its income tax return for the year 1938 with the collector of Internal Revenue at Tacoma, Washington, within this Circuit. The decision of the Board was entered January 30, 1942, (Tr. 104-105). This petition for review was filed April 23, 1942 (Tr. 108). This Court has jurisdiction under Sections 1141 and 1142 I. R. C.

STATEMENT OF THE ISSUES

The petitioner presents the following questions of law arising upon the facts as found by the Board of Tax Appeals, or established by the record:

1. Is the petitioner exempt from income tax by virtue of Sec. 101 (7) of the Revenue Act of 1938, which exempts from taxation business leagues . . . . not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual?

2. Altho organized as a non profit business league, does the purchase and sale to its members of merchandise, and the publication and distribution to its members of a trade journal, change the corporation to a profit organization?

3. Are dues paid by members to defray expenses of a business league, income within the meaning of the Internal Revenue Statute?

STATEMENT OF FACTS

The petitioner is a non profit organization formed under Section 3888 and subsequent sections of Remington's Revised Statutes of Washington relating to corporations not formed for profit, (Tr. 12). Its articles of incorporation (Tr. 48-54) define its objects and purposes as follows:

> "The objects and purposes for which this corporation are formed are as follows:
>
> "(a) To provide a mutual benefit organization not operated for profit, for the purpose of gathering and distributing facts, data, and information relative to the ownership, operation, and general conduct of apartment houses and the apartment house business in general, for the use and benefits of its members and for public dissemination.
>
> "(b) To provide a meeting place, office and other facilities which are deemed necessary or desirable in the handling of its affairs and for use and benefit of its members.
>
> "(c) To handle goods, wares and merchandise required by its members, and to render service and counsel, and assistance to its members, and generally to assist them in control of their financial and economic interests and stabilization of the industry.
>
> "(d) To own, operate, publish, manage and distribute any publication deemed advisable, and particularly the magazine known as the 'APARTMENT JOURNAL' in accordance with the law governing such publications, and in connection therewith to employ agents to conduct and handle the same, sell advertising space therein, and to do all things deemed necessary or expedient in connection therewith.
>
> "(e) To encourage and assist in the organization of apartment house owners and operators in the State of Washington."

The articles also define in part the powers, rights and privileges of said corporation under the laws of its incorporation as follows:

> (j) To establish, accumulate, and operate a surplus fund from any of its operations, including: Members' fees, charges and dues; and services rendered members and supplies purchased and handled for its members; and to distribute such fund to members in accordance with the provisions of its By-laws.

The trial Examiner in his findings of fact (Tr. 101-103), after setting out the foregoing quotations, including several others, says:

> "Petitioner exercised substantially all the foregoing functions. It acted as a clearing house for information about tenants, about the operation of apartment houses, and about legislation affecting the business; it gave counsel and advice, and did what it could to promote the common welfare of the members. On its own machine, it printed specially designed forms, such as rent receipts and rental agreements for use in its locality and sold them to members at cost, plus a small margin, the price being less than a member would ordinarily pay if he were independently to have the forms printed. It gets information about prices and buys articles, such as electric light bulbs and other electrical equipment, for its members in larger quantities and at lower unit prices than they would ordinarily pay, and sells them to the members at prices slightly above cost. In 1938 it bought at a 36 per cent discount and sold to its members at 32 percent discount. The price does not include any portion of overhead expenses, such expenses, as for rent, furniture, equipment, and salaries, being paid entirely out of dues. In 1938 it published a journal and distributed it among its members. By this means it disseminated information more inexpensively than by letter or pamphlet. The journal carried advertising of supply houses, light and

power, and telephone companies; it did not pay for itself, and was discontinued in 1939. It represents members in labor disputes, and negotiations and hearings are held in its rooms.

"Petitioner has no purpose or intention of making a profit, but it tries to have a small surplus to assure its continuance. It maintains a general fund comprising all its receipts, including dues and sales and advertising receipts, and from it payment is made of all expenses, such as salaries and equipment. In 1938 the fund grew and then remained stationary.

"As shown by its 1938 return, petitioner's gross receipts were $10,814.17, comprised of dues $6,943, journal $2,519.09, and merchandise sales $1,352.08; and its expenses were $9,873.08, comprised of general expense $3,641.96, journal $4,604.96, and merchandise purchases and expenses $1,626.16."

The records of the corporation were analyzed during the proceedings, before the Trial Examiner, after counsel for respondent claimed:

"It is the position of the respondent that the petitioner is engaged in business and in the type of business normally carried on for profit.

"I think the evidence will show that it bought and sold merchandise at a profit; that it published a journal and accepted advertising in that publication.

"Now those are operations that are normally carried on at a profit. They claim a deficiency in that basis." (Tr. 17).

The details of the purposes and operations of the petitioner corporation are found in the testimony of Harry T. Williams (Tr. pp 11-30). These details greatly abbreviated are:

Petitioner incorporated as a non-profit organization; gathered and disseminated information relative to apartment house business, studied legislation, prepared reports of tenants, printed forms peculiar to apartment house operation, aided members in purchasing supplies from dealers, and from time to time published a journal for members, and acquired a surplus fund to act as a "cushion" sufficient to cover operating expenses for a period not to exceed four months.

E. J. Miner, a certified public accountant, prepared an audit and report of petitioner's business for the year 1938. This report is set forth in petitioner's Exhibit No. 2, (Tr. 78-82). Exhibit 1 of this report (Tr. 80) is a summary of receipts and disbursements:

"EXHIBIT 1

Apartment Operator's Association

Cash Receipts and Disbursements

Year Ended December 31, 1938.

Cash Balance, January 1, 1938			$1,209.06
Cash Receipts:			
Membership Dues	$6,943.00		
Journal Advertising	2,519.09		
Cash sales of Supplies	733.33	V Sales	
Collection on Supply Accounts Receivable	618.75		10,814.17
			12,023.23
Cash Disbursed—Exhibit 2			10,456.82
Cash on Hand and in Bank, December 31, 1938			1,565.41
		(Pencil Notation)	1,209.06
		(Pencil Notation)	356.35

Note: There was also Cash in Bank in the amount of $241.00 representing Legislative Fund Assessments collected. During January 1939 a separate bank account was opened for this fund.

Exhibit 2 of this report gives the details of disbursements totaling $10,457.82, and further arranges departmental operations showing a surplus from dues of $1,868.66, and a loss from the journal publication of $899.33, and a loss on the sale of merchandise of $612.98, leaving a net income per books of $356.35. (Tr. 80-81).

The surplus fund on January 1, 1938, amounting to $1,209.06 and on December 31, 1938, amounting to $1,565.41 (Tr. 80), was never distributed according to the testimony of Harry T. Williams, on redirect examination (Tr. 24).

> "Q. And has any of this general fund ever been distributed to anyone?
>
> A. No sir."

The only two items which respondent claimed constituted profit are referred to in the findings of fact, and are summarized in the last six lines thereof as follows:

> "Journal receipts $2,519.09;
>
> Journal expenses $4,604.96;
>
> Merchandise sales, $1,352.08;
>
> Merchandise purchases and expenses, $1,626.16."

SPECIFICATIONS OF ERRORS TO BE URGED

Petitioner assigns the following errors by the Board in its decision:

1. Failure to hold that petitioner is exempt as a business league under the Revenue Act of 1938 Sec. 101 (7).

2. Failure to hold that the petitioner is not engaged in a business ordinarily carried on for profit.

3. Failure to hold that the petitioner's purchase of supplies and re-sale to its members is incidental to the main purpose of its existence.

4. Failure to hold that the petitioner is an organization where the members have a common business interest organized primarily to advance and protect the business interests of its members, and that it is not a cooperative buying organization.

SUMMARY OF THE ARGUMENT

The facts support the findings of fact by the Trial Examiner, that petitioner was organized as a non profit business league. The undisputed facts disclose that petitioner committed no act to change its status to a profit corporation,—in fact, it meticulously carried out its original purposes, and was thus entitled to its exemptions under Sec. 101 (7) of the Revenue Act. The corporation, in fact, made no profit in 1938, and membership dues are not taxable income.

ARGUMENT

A.

Petitioner was organized as a non profit business league, without capital stock, and no part of net earnings inured to any private shareholder or individual.

The Board erred in holding that petitioner was not exempt as a business league within the meaning of the Revenue Act of 1938. The record, we contend, clearly shows that petitioner is a business league not organized for profit and that no part of its net earnings have ever inured to the benefit of any member, and furthermore, there is no intention that that will ever inure in the future for that purpose.

Sec. 101 (7) of said Revenue Act reads as follows:

> "Business leagues, chambers of commerce, real estate boards, or boards of trade, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual."

A Washington corporation organized under the non profit statute is a business league within the meaning of said section.

If the purpose to engage in such a business is only incident or subordinate to the main or principal purpose required by statute, the exemption cannot be denied on the ground that the purpose is to engage in such a business. In the cases cited by the member of the Board of Tax Appeals, in his opinion in support of his decision, the *purpose* to engage in a regular busi-

ness of a kind ordinarily carried on for profit was not incidental to the purpose required by statute.

In determining whether a purpose to engage in a regular business of a kind ordinarily carried on for profit is merely incidental or subordinate, each case must stand on its own facts, and no rigid rules may be established as a gauge.

To entitle a business league to exemption, two conjunctive requirements must be met (1), it must not be organized for profit, and (2), no part of its net earnings must inure to the benefit of any private share holder or individual. If it fails to meet both of these tests, it is not exempt. If it meets them, it is exempt.

Petitioner was organized as a non profit corporation under the Statutes of the State of Washington and so found by the trial examiner. (Tr. 102-103). The pertinent sections of such statute provide:

> "Sec. 3888 PURPOSE. Corporations may be formed under the provisions of this chapter for any lawful purpose except the carrying on a business, trade, avocation or profession for profit."

Under the laws of Washington, the petitioner is in good standing and is functioning according to its Article By-laws and statutes. The corporate set up is exactly in line with the statute. It logically follows that unless the petitioner violates the very statute which breathes life into it, it cannot engage in a profit making enterprise, nor distribute any net earnings to its members. There is no evidence of such violation,—

in fact, the record shows that the petitioner has not in any way violated the statute under which it is formed. The statute specifically contemplates the furnishing of supplies to members of non profit corporations. Section 3893 of said code says in part:

> "The corporation may by its by-laws provide . . . . the charges which may be made for services rendered or supplies furnished the members of the corporation by it. . . ."

The statute also contemplates such things as a surplus fund and the publication of a journal. Section 3893 continues to list functions of non profit corporations that may be provided for as follows:

> " . . . . the formation of a surplus fund and the manner and proportions in which such surplus funds shall be distributed, either upon the order of the corporation or upon its dissolution, and generally all such other matters as may be proper to carry out the purpose for which the corporation was formed."

There is absolutely no evidence that the petitioner was formed for profit or that it has ever distributed either money or goods as dividends among its members. It is clear from the testimony that the petitioner was only a group of apartment operators banded together for the sole purpose of assisting each other to more efficiently operate their buildings. The amount of goods (mostly receipt books and electric light globes) purchased by the petitioner and sold to its members at a slight mark-up, is so small that such purchase and distribution is merely incidental or subordinate to the

purposes permitted by statute. The Journal is clearly the most practical and economical way of disseminating information regarding apartment operation among the members, and the acceptance of advertising to help defray the expense of publication is merely the means of making the dissemination of information as economical as possible.

The respondent contended that the services in the case at bar showed that the petitioner was engaged in business for profit and was accordingly barred from exemption and the Board of Tax Appeals sustained him in his contention. This position is, however, not sustained by the evidence, the Findings of Fact, or by the conclusions drawn from the findings of fact. A Washington Corporation organized under the non profit statute, is a business league within the meaning of Sec. 101 (7) of the Revenue Act, where no part of the net earnings inures to the benefit of any private shareholder or individual. This position we believe is fully sustained by the authorities dealing with the subject.

Crooks v. Kansas City Hay Dealers Association, 37 Fed. (2d) 83

was brought to recover from the Collector of Internal Revenue income tax, for which rebate had been refused. The trial court allowed recovery, and the Collector appealed. In affirming the trial court the Appellate Court said:

> "Was the association organized for profit? The by-laws provide certain charges for specific services

to be performed for the members such as weighing, plugging, and watching cars of hay. Provision is made for the sale of loose hay that may be on the tracks. All of these collections go into a general fund. Out of these things, including assessment of some fines, the association in 1924 had a net profit of $3,211.48, which included an item of interest from bank deposits, and an invested return surplus of some $1,000.00, which it had at that time accumulated. Upon these facts appellant builds its argument that the association is organized for profit.

"It is unquestioned that the fees received from weighing, plugging and watching services have in some years produced a profit to the association, while in other years there has been a deficit . . . . the more fact that an association of this character may receive some income and arrange that income so as to carry on its work is no proof that it is organized for the sake of profit.

"It has been the experience of the association that the fees realized from these services exceeded the costs of the service, and the surplus over and above the amount actually expended to maintain the service, went into the general fund of the association, and was used wholly in furtherance of the objects and purposes thereof, and no part of said fund has inured to the benefit of any member of the association, or any other individual, but such fund must be used solely and exclusively in furtherance of the objects of the association in accordance with its constitution and by laws. In the examination of the Articles of Incorporation and by-laws of the Association, nothing can be found to substantiate any theory that this organization was organized and conducted for profit."

B.

The publication and distribution of a trade journal, and occasional purchase and sale of merchandise, was merely incidental and the corporation in fact made no profit.

Santee Club v. White, Former Collector of Internal Revenue, 87 Fed. (2d) 5

was an action brought to recover income taxes assessed and paid under the Revenue Act. The Santee Club was organized under the Membership Corporation Law of New York, which was not applicable to corporations, "organized for pecuniary profit." One of the objects of the corporation, as set forth in its constitution was: "To raise such plantation, farm and garden products upon real estate owned by the club, as the club may desire, and to sell or otherwise dispose of the same." In the opinion of the Appellate Court affirming the lower court, which allowed recovery, is the following language:

> "The exemptions are accorded to specific corporations, not to specified transactions . . . . In order to be within the exemptions it must appear, as the District Judge said, that the club in question was (1) organized exclusively for pleasure, recreation and other non-profitable purposes; (2) that it had been *operated* exclusively for such purpose; and (3) that no part of its net earnings *inured to the benefit* of its shareholders. . . .
>
> "We think it clear that considering the provisions of the Certificate of Incorporation, and of the constitution of the club, in connection with the Statute under which the club was organized, it is clearly apparent that the club was organized for non profitable purposes. The last clause in the 3d object 'and to sell or otherwise dispose of the same,' which is relied on by the Government, refers, we think, to a disposal of surplus products, not to a purpose of engaging in the business of raising products in a commercial way."

As the the sale of the real estate, the Court held it was incidental to the general purposes of the club, citing in support of its position, *Lederer v. Cadwalader,* 274 Fed. 753, as follows:

> "A single, isolated activity . . . . does not constitute a trade, business, profession, or vocation."

In appeal of *Waynesboro Manufacturers' Association,* 1 B.T.A. 911

the taxpayer claimed exemption from tax under the Revenue Act of 1918, as a "business league . . . . not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual." The taxpayer was an unincorporated association. In its constitution is the following provision:

> "This association shall not be conducted for profit, but shall be maintained by fees, subscriptions and savings effected by collective buying; provided that when a working capital of $25,000.00 is accumulated, these fees, etc., shall be reduced so that they shall cover only the running expenses of the association."

In that case, according to the opinion, both parties agreed the taxpayer was a business league, but they did not agree it was one not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder or individual, and therefore exempt by the statute. The opinion was written by Honorable John M. Sternhagen, one of the members of the U. S. Board of Tax Appeals, and the member before whom the case at bar was tried, and from whose judgment this appeal was taken.

After citing and quoting from *Trinidad v. Sagrada Orden*, 263 U. S. 578, 68 L. Ed. 458; 44 S. C.L -204, the trial tribunal reversed the Commissioner, saying:

> "Looking at the constitution of the tax payer, it appears not alone from its affirmative statements of purposes and objects, but by an expressed inhibition that it 'shall not be conducted for profit.' It may acquire a working capital of $25,000.00, but this is not the avowed purpose of its creation. Such working capital is only for the purpose of enabling it to fulfill its non profit functions. And the evidence does not contain any facts which would indicate that actually the association was conducted for profit. It had earnings, but the Supreme Court in the *Trinidad* case clearly said that Congress contemplated this, and that net income does not take the organization out of the Statute. We think the tax payer is a business league not organized for profit. . . .
>
> "The second question is as to the destination of the income—whether any part inures to the benefit of any private individual. This is a question of fact to be determined upon evidence . . . . Here, however, the Commissioner agrees that the taxpayer retained for its own use its earnings. No part thereof inured to the benefit of any individual. Thus the statutory qualifications are fully met."

We quote from the syllabus in *King County Insurance Association,* petitioner *v. Commissioner of Internal Revenue,* respondent, 37 B. T. A. 288

which sets forth the facts therein succintly:

> "Petitioner is a 'trade association,' organized under the laws of the State of Washington, as a non profit organization. Its membership is composed of agents of various insurance companies writing fire and liability insurance in King County, Washington. In order to meet a part of overhead

expenses, the members turn over to the association the business of writing policies upon the Port of Seattle, Seattle School District, and King County Hospital, and the Olympic Hotel, which was constructed upon state lands. The dues of the members were thereby reduced. Held, that the petitioner is a business league, exempt from income tax, under Sec. 103 (7) of the Revenue Acts 1928 and 1932.

This proceeding was brought before the Board of Tax Appeals for the redetermination of deficiencies and penalties for delinquency in filing returns. The first question presented therein was whether or not the petitioner was a business league, exempt from income tax.

In its opinion, the Board said:

"There can be no question but that the petitioner qualifies as a business league, exempt from income tax for 1931 and 1933, the taxable years involved in this proceeding, unless it is barred from such exemption by reason of the fact that it acted as agent in writing insurance policies on so-called 'public business.'

"The respondent contends that by reason of this fact, the petitioner engaged in business for profit, and is accordingly barred from exemption. The evidence shows, however, that the members waived their commissions upon this public business in favor of the association, in order to provide additional revenue for the petitioner's expenses and because it was deemed in the public interest that there should be no competition on the part of the members in the writing of policies upon municipally owned properties. The members nevertheless were required to pay dues or advances, which were rebated only in part upon the receipt by the Association of the commission upon the public business."

The decision in *Inland Empire Rural Electrification, Inc., v. Department of Public Service,* 199 Wash. 527; 92 Pac. 528; sustains our contention in the case at bar.

The Inland Empire, etc., was a corporation created under the same statute as the petitioner herein. A group of farmers incorporated it for the purpose of acquiring electrical energy at cost and selling it to its members. The Department of Public Service asserted and exercised jurisdiction over it as though it were a public service corporation. The Supreme Court held it was not under the jurisdiction of the Department of Public Service, and was pursuing its activities strictly in accordance with the act under which it has been created. The Department contended that although created and purporting to operate under that act, it was in fact and law a public service corporation. In holding that said corporation was not under the jurisdiction of the Department of Public Service, the Court said:

> "Respondent was organized under the 1907 act and, so far as the complaint shows, it conducts its business strictly in accordance with the privileges conferred and the limitations prescribed by that act. But more important than that is the controlling factor that it has not dedicated or devoted its facilities to public use, nor has it held itself out as serving, or ready to serve, the general public or any part of it. It does not conduct its operations for gain to itself, or for the profit of investing stockholders, in the sense in which those terms are commonly understood. . . .

> The service, which is supplied only to members, is at cost, since surplus receipts are returned ratable according to the amount of each member's consumption. There is complete identity of interest between the corporate agency supplying the service and the persons who are being served. It is a league of individuals associated together in corporate form for the sole purpose of producing and procuring for themselves a needed service at cost. In short, so far as the record before us indicates, it is not a public service corporation."

A number of cases are cited by the Court in support of its decision. *Terminal Taxicab Company v. Kutz,* **241 U. S. 252**; 60 L. Ed. 984; 36 S. Ct.. 583; is one of them. In that case the question to be decided was whether or not a corporation, organized by its charter to carry passengers and goods by automobile, taxicab and other vehicles, but not to exercise any of the powers of a public service corporation, was a common carrier and within the meaning of the Public Utility Act, and subject to the jurisdiction of the Public Service Commission. Of the company, the Court said:

> "It does busness in the district, and the important thing is what it does, not what its charter says."

In *State ex rel. Silver Lake R. & L. Co. v. Public Service Commission,* 117 Wash. 453; 201 Pac. 765; the Court said:

> "In our opinion, the question of the character of the corporation is one of fact and must be determined by the Courts upon the evidence presened in the record."

In *U. S. v. Brooklyn Terminal,* 249 U. S. 296; 39 Sup. Ct. Rep. 283, 63 L. Ed. 613, the Court said, by Justice Brandeis:

> "We have merely to determine whether Congress, in declaring the Hours of Service Act applicable 'to any common carrier or carriers, their officers, agents and employees, engaged in the transportation of passengers and property by railroad,' made its prohibitions applicable to the terminal, and its employees engaged in the operations were involved. The answer to that question does not depend upon whether its charter declared it to be a common carrier, nor upon whether the State of incorporation considers it such; but upon what it does."

It is noteworthy that there is absolutely no question of good faith or intentional misstatement of fact anywhere in these proceedings, and the Trial Examiner in effect so found.

Reexamination of Exhibit I (Tr. 80) also fully set out on page 6 of this brief, shows actual increase in assets or income for 1938, $356.35, the membership dues accounting for about two-thirds of the receipts.

It is conceded also, and so found by the Trial Examiner, that the journal receipts amounted in round numbers to $2500, and the Journal expense in round numbers $4600. Merchandise sales in round numbers, $1350.00, and merchandise purchases and expenses, $1625. By every rule of mathematics and reason, any surplus must come from the membership dues. Under what theory can these dues be treated as profit? The answer is, obviously, they can not. They were treated

and should be treated merely as accumulated funds for the purpose of carrying on the business league.

As we understand the theory of the Board of Tax Appeals, any surplus *might be* distributed to members, but the fact still remains, *it was not.*

CONCLUSION

For the foregoing reasons, petitioner contends that the Board erred in determining that for purposes of Federal Income Tax for the taxable year 1938, it was not exempt as a business league, not organized for profit and no part of the net earnings of which inures to the benfit of any private shareholder or individual, and that therefore the decision of the Board should be reversed, with directions to allow exemption claim by the petitioner in its return for the taxable year.

Respectfully submitted,

EDWARDS MERGES,

JOSIAH THOMAS, and

CLARENCE L. GERE,

Attorneys for Petitioner.